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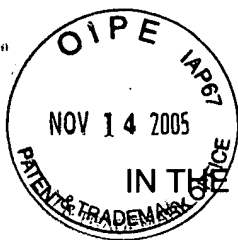
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TRANSMITTAL FORM (to be used for all correspondence after initial filing) Total Number of Pages in This Submission	Application Number	09/326,405
	Filing Date	June 4, 1999
	First Named Inventor	Dave B. Lundahl
	Art Unit	3637
	Examiner Name	Tran A, Phi Dieu N
	Attorney Docket Number	INOV.01US01

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Cochran Freund & Young LLC		
Signature			
Printed name	Samuel M. Freund		
Date	November 14, 2005	Reg. No.	30,459

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Dave B. Lundahl

Examiner: Tran A, Phi Dieu N

Serial No.: 09/326,405

Group Art Unit: 3637

Filed: June 4, 1999

Docket: INOV.01US01

Title: IMPROVED WINDOW SCREEN SYSTEM

Mail Stop Appeal Brief - Patents
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SUPPLEMENTAL REPLY BRIEF

Honorable Board of Appeals:

Appellant responds to the Supplemental Examiner's Answer dated
September 15, 2005 as follows:

1. In Section 10, paragraph 2, of the Supplemental Examiner's Answer, the Examiner combined Kehne (U.S. Patent No. 2,713,896) with Lazarek (U.S. Patent No. 3,753,458) in a rejection under 35 U.S.C. 103(a). In Section 2141.02 of the Manual of Patent Examining Procedure, Differences Between Prior Art and Claimed Invention, the paragraph entitled "Prior Art Must Be Considered In Its Entirety, Including Disclosures That Teach Away From The Claims" states that: "A prior art reference must be considered in its entirety, i.e. as a whole including portions that would lead away from the claimed invention." Moreover, in Section 2145 of the Manual of Patent Examining Procedure, the paragraph entitled "References Cannot Be Combined Where Reference Teaches Away from Their Combination" states that: "It is improper to combine references where the references teach away from their combination." In addition

to several arguments set forth in previous papers by applicant that there is no motivation for one having skilled in the art to combine Kehne with Lazarek, applicant wishes to direct the attention of the Board of Appeals to the disclosure and claims of Lazarek which the Examiner has not cited, and which clearly teach away from Kehne.

Turning now to the first line of the Abstract, Col. 1, lines 44-45, Col. 3, lines 24-27, and claim 1, lines 3-4, of Lazarek clearly emphasize that the sheet of screening is to be somewhat larger than the window. Moreover, Col 3, lines 9-11, calls for canvas belting extending beyond the periphery of the screen to form a tab. This permits the screen of Lazarek to be mounted over the car window (Col. 1, lines 60-61).

Kehne, in Col. 3, lines 34-40, requires that the outer edges of the jambs be spaced inwardly from the inner face of the sash frame in order to provide a seat for the frame of a window screen. From Figs. 1 and 2 it may be observed that the window screen frame is disposed inside of the perimeter of the fixed frame (the components of fixed frame, 11, are defined in Col. 2, lines 42-51) of Kehne. Kehne further requires in Figs. 1 and 2 and in Col. 3, lines 11-15, that weather stripping secured to the inner surface of the sash frame is adapted to seat in the bottoms of the grooves in the outer surface of the fixed frame. If one were to combine the teachings of Lazarek, which stress an oversized screen (one larger than the perimeter of the window panel and, as a result, larger than the perimeter of the window frame of Lazarek), with Kehne which, by contrast, requires a screen frame and consequently a screen that is smaller than the perimeter of the fixed frame, the weather stripping secured to the inner surface of the sash frame of Kehne could not properly seat in the bottoms of the grooves provided therefor in the stationary frame. Thus, the combination of Lazarek with Kehne, as the Examiner has suggested, renders the invention of Kehne inoperative.

As stated in previous papers, Kehne and Lazarek disclose the use of screens in different locations with respect to the window, and for different window designs. There is little to restrict the oversize dimensions of the screen

disclosed by Lazarek, since the operation of the window is unaffected thereby. By contrast, screen dimensions are important for Kehne, since the proper operation of the sash frame would be impaired by a screen constructed in accordance with Lazarek.

Clearly then, the combination of Lazarek with Kehne, as suggested by the Examiner, is an attempt to reconstruct appellant's invention using hindsight. Moreover, since Lazarek teaches away from Kehne, the Examiner has improperly combined these references, and thereby failed to make a proper *prima facie* showing of obviousness.

2. In Section 10, paragraph 2, of the Supplemental Examiner's Answer, the Examiner concluded that: "... it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kehne to show the screen being attached to the frame by hook and loop fastener because it would enable easy and quick mounting/dismounting of the screen from the frame and easy fitting of the screen frame around a window frame as taught by Lazarek (emphasis added by applicant)." Applicant wishes to point out that the Examiner has misunderstood the teachings of Kehne.

In Col. 1, lines 41-45 of Kehne, the window is defined as a composite casement including a fixed frame with hinged sash, wherein the frame may be completely assembled for shipment as a composite unit for installation. In Col. 2, lines 43-44, Kehne further defines the window as the fixed frame **11** in Figs. 1 and 2. In Col. 3, lines 26-40, Kehne defines the screen as fitting inside of frame **11** and seated against the outer edges of other independently applied wall construction elements that Kehne identifies as jambs **25**. Kehne further confirms that the jamb elements are independent from the window frame of Kehne in Col. 3, lines 52-56. Figures 1 and 2 clearly show that jambs **25** are building construct elements which surround Kehne's window, but are not part of the window itself; jambs **25** are illustrated with the same hatch markings as other wall sheathing **7** and wall covering **8**, instead of the hatch markings utilized to identify window components, **11** and **16**. Moreover, the components of fixed frame, **11**, are

defined in Col. 2, lines 42-51, of Kehne, and do not include jambs **25**. Thus, the Examiner is incorrect in stating that "... the screen being attached to the frame by hook and loop fastener" Since Lazarek requires that the demountable screen be mounted around what would be considered to be the frame of the sliding car window, while Kehne does not mount the screen frame to the window frame, applicant believes that the two references teach away from one another; that is, Kehne mounts the screen disclosed therein to structures other than the window frame.

Applicant therefore believes that the Examiner has improperly combined the Kehne and Lazarek references, and thereby failed to make a proper *prima facie* showing of obviousness.

3. In Section 11, "Response to Argument," of the Supplemental Examiner's Answer, the Examiner argued that applicant's disclosure of only one architect specifying the use of the Frameless Velcro Screen System, and the sales to one architect does not constitute exuberant commercial success. The Examiner also questioned whether the elimination of the conventional aluminum screen frame was the reason for the sales, and whether the "aesthetic value" of the claimed window design is the reason for the sales. The Examiner also stated that the part of the system which is preferred by the architect is disclosed by the Kehne reference.

In the Declaration Under 37 CFR 1.132 by Michael Thompson, it is clearly stated that the subject thereof is a casement window having a removable screen connected to the fixed frame with a hook and loop fastener system. This feature is not disclosed by the Kehne patent, and the recommendation of Mr. Thompson to Lipkin Warner Design and Planning, LLC which led to the purchase of a significant number of Point Five Windows having a Frameless Velcro Screen System, was based on the aesthetic and functional differences of these windows over any known windows.

Additionally, the Declaration Under 37 CFR 1.132 by Randy Helzer stated that the specific advantages of the subject claimed Frameless Velcro Screen

System of relief from sagging and bowing for screen sizes greater than 5 feet, relief from frame damage for these larger sizes, and freedom from corrosion when screens are exposed to salt spray, are the direct cause of the increased sales experienced by Point Five Windows for windows bearing the features of the subject claimed invention.

Section 715.03(b) Commercial Success Derived From Claimed Invention, of the Manual of Patent Examining Procedure in a discussion of *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 7 USPQ2d 1222 (Fed Cir. 1988), states that: "In civil litigation, a patentee does not have to prove that the commercial success is not due to other factors. 'A requirement for proof of the negative of all imaginable contributing factors would be unfairly burdensome, and contrary to the ordinary rules of evidence.'" Additionally, this Section states that: "To be pertinent to the issue of nonobviousness, the commercial success of devices falling within the claims of the patent must flow from the functions and advantages disclosed or inherent in the description in the specification." The subject Declarations clearly make this connection.

As stated in Section 816, Give Reasons for Holding of Independence or Distinctness, of the Manual of Patent Examining Procedure: "The particular reasons relied upon by the Examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given." Although this Section does not specifically describe the present situation, its teachings are clearly related. The Examiner has made certain conclusions concerning the content of the subject Declarations without stating the particular reasons therefor.

Appellant's Declarations submitted during prosecution clearly show that the commercial success of the claimed invention is directly related to the advantages provided by the present claimed invention. As stated therein, these advantages include the lack of sagging of appellant's screen for large screen applications, the absence of corrosion of metal screen frames since such frames are specifically excluded from appellant's claimed invention, and the overall

aesthetic improvement of appellant's windows because appellant's screens eliminate the aluminum screen frame. Appellant's screens are used in high-end applications, as pointed out in the submitted affidavit evidence in which aesthetics (in the elimination of aluminum screen frames, as an example) are an important factor. This evidence has been ignored by the Examiner. The Declaration evidence therefore constitutes significant support for the non-obviousness of the subject claimed invention.

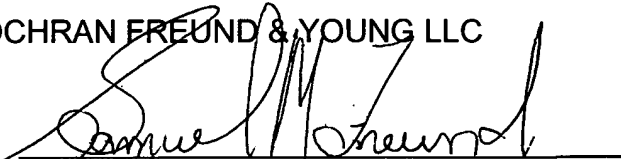
Appellant therefore requests the Board to consider these comments in response to the arguments set forth in the Examiner's Supplemental Answer.

Dated this 14th day of November 2005.

Respectfully submitted,

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